

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CRIMINAL NO. 2:07CR2

UNITED STATES OF AMERICA

vs.

GREGORY MICHAEL McMAHAN

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ORDER

THIS MATTER is before the Court on a letter received from the Defendant on January 16, 2008. For the reasons stated below, the letter will be construed by the Court as a motion to extend the time for filing an appeal and as a *pro se* notice of appeal of Defendant's conviction and sentence.

The Rules of Appellate Procedure provide that in a criminal case,

[u]pon a finding of excusable neglect or good cause, the district court may . . . extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed [by this Rule].

Fed. R. App. P. 4(b)(4).

On October 25, 2007, this Court sentenced the Defendant to a term of 262 months imprisonment for violations of the Controlled Substances

Act. **See Judgment in a Criminal Case, filed October 29, 2007.** No notice of appeal was filed.

The Defendant states that he instructed his attorney to file a notice of appeal; but despite repeated inquiries to his attorney that have gone unanswered, the Defendant does not know whether or not an appeal was filed.

Although the Defendant has presented good cause for the failure to timely file his notice, he does so outside the 30-day period provided by Rule 4. Therefore, the Court has no jurisdiction to extend the time for this Defendant to file his notice of appeal.

IT IS, THEREFORE, ORDERED that the Defendant's letter is construed as a motion to extend time for filing appeal, and the same is **DENIED** for lack of jurisdiction.

IT IS FURTHER ORDERED that the Defendant's letter is also construed as a *pro se* notice of appeal and, should the Fourth Circuit entertain Defendant's appeal, the appointment of appellate counsel is hereby respectfully referred to that Court.

Signed: January 18, 2008

A handwritten signature in black ink, appearing to read "L. H. Thornburg", written over a horizontal line.

Lacy H. Thornburg
United States District Judge

